HARVARD LAW REVIEW.

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WE wish, on behalf of the School, to recognize the generous and practical gifts of the Harvard Law School Association. Although the interest of the students in the work here certainly does not need the stimulus of prizes, yet this offer of a prize essay will serve to direct the surplus energy toward a definite end, and ought to result in the production of genuinely good work. Through the kindness of the officers of the Association we shall publish the prize essay as soon as possible after the award. As only one subject can be treated by this essay, and a prize of this kind, offered annually, ought to arouse some competition, we shall be glad to publish essays on the other subjects which may be deemed by the judges worthy of publication, provided, of course, the consent of the authors is obtained. In this way unsuccessful competitors may have at least the satisfaction of submitting their work to the public for what it may be worth.

THE Harvard Law School Association has given one thousand dollars to the School to increase the instruction in constitutional law. The Association expect to make this an annual gift, in addition to offering an annual prize for the best essay on some legal subject.

IT has been the custom in Scotland, until very recently, to set forth regularly in a criminal indictment the number of times the accused has previously been convicted of the crime. A recent act,[1] known as the Criminal Procedure (Scotland) Act, provides that "it shall not be necessary to set forth in an indictment . . . any previous conviction or productions that are to be used against accused, but it shall be sufficient that they be entered in the list of productions to be used at the trial, every such conviction being therein described as a conviction applying to person accused, against whom it is to be used." Previous convictions may lawfully be put in evidence as aggravations against any person accused.

[1] 50 & 51 Vict. c. 35, Secs. 19, 63, 64, 65; L.R. 24, St. 125.

THE Ohio Legislature at its last session defined anew the rights and liabilities of husband and wife.[1] They are bound by "obligations of mutual respect, fidelity, and support." The "mutual" does not apply to support, taken literally, since a subsequent section provides that the husband must support his family; but if he is unable to do so the obligation becomes "mutual." In the event of the death of either, the other is "endowed" of a life interest in one-third of the real estate of the deceased, and succeeds to one-third of the personalty, except the first four hundred dollars, one-half of which descends to the "widow or widower." They may contract with each other or with other persons as they might if single; but, in transactions with each other, are subject to the general rules applying to persons occupying fiduciary relations. They may "take, hold, and dispose of property, real or personal, the same as if unmarried."

THE Harvard Law School Association offers a prize of one hundred dollars for the best essay on any of the following subjects: —

1. The liability for negligence in the case of *Heaven* v. *Pender*, 9 Q.B.D. 302; 11 Q B.D. 503.

2. What limitations, if any, are imposed by the Federal Constitution upon the rights of the States to enact quarantine laws?

3. The history of the law of business corporations prior to the year 1800.

The competition for the prize is open to members of the third-year class only. Essays must be sent to the secretary of the Association on or before the 1st of June, 1888. The prize will be awarded at the meeting of the Association which is to be held in Cambridge on the Tuesday before commencement.

LOUIS D. BRANDEIS,
Secretary.

A CURIOUS survival of an antiquated legal form is described in a letter to the New York "Sun" of November 13.

By the marriage laws of Delaware, every white couple about to marry must give a penal bond of $200, as a guaranty that there is no legal objection to their marriage, and must also take out a marriage license, unless the banns of marriage have been published in a prescribed manner. The cost of this license, including fee to the clerk, is $2.50.

As to the marriage of negroes, the law is a relic of the days of slavery, but is still in force, "mainly by the consent of the colored folks themselves, who save dollars by the law."

The statute (Revised Code, sec. 4, chap. 74) reads as follows: —

"Negroes or mulattoes may be married without license or publication of banns, provided that each party (being free) shall produce the certificate of a justice of the county that such party has made before him satisfactory proof of freedom; or (being . . . servant) shall produce the written consent of his master or mistress to the marriage."

This certificate or permit costs only 50 cents. On account of the $2.00 thus saved by not taking out a license, it is said that even at the present day most negroes when about to marry procure this certificate of freedom. No marriage, however, in which the provisions of the statute were not complied with has yet been questioned.

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[1] 84 Ohio Laws, 132.

We have received the interesting and able opinion delivered November 7, 1887, by Judge Davis, in the Court of Claims, in the French Spoliation Cases.

After a careful review of the authorities the Court decides that the treaties of 1778 were annulled by the United States by the abrogating act of July 7, 1798. It is shown that a limited war existed between France and the United States. The perils from privateers were such that many of our merchant vessels were compelled to arm for their protection; and the Court concludes that the mere arming of such a vessel whose object was trade, even if an instruction or license under the acts of 1798, authorizing her to recapture American vessels, and to take armed French vessels within the jurisdiction of the United States, or elsewhere on the high seas, was found on board, did not authorize her seizure and condemnation.

The naval warfare on the Atlantic coast from the year 1793 to the year 1800 is reviewed at length, to show that the British West Indies were not in a state of blockade, and, therefore, that a provision-laden ship bound for Martinique was not properly liable to condemnation.

The Court also held that, owing to the unfair treatment received by our shipping at the hands of the French, an American man-of war was entitled to salvage for rescuing an American vessel from a French privateer, although the United States was a neutral nation. The opinion is a very interesting review of the controverted questions between France and the United States during the latter part of the last century.

A pamphlet on Trial by Jury,[1] which has been kindly sent to us by Ex.-Gov. Chamberlain, contains some interesting statistics of the recent bribery trials in New York:—

"Four trials of indicted aldermen, and one of the briber Sharp, have taken place. The whole number of days occupied by four trials and one re-trial, including Sundays, holidays, and adjournments, was 61, or about 12 each. . . . It is of interest also to note that in the fourth trial the whole number of jurors summoned was 324, the whole number examined, 205; while the prosecution exercised 13 of its peremptory challenges and the defence only 6; that in the fifth trial the whole number of jurors summoned was 1,050, the whole number examined, 594; the prosecution exercising 17 peremptory challenges, and the defence 20. The trial of Jacob Sharp was begun May 16, 1887, the jury was completed June 15, and the verdict of guilty was given June 29. In this trial the whole number of jurors summoned was 2,100; the whole number examined, 1,196; the prosecution exercising 15 peremptory challenges, and the defence 20. In this case 44 calendar days elapsed from the beginning to the end, and, if I am correctly advised, 31 full court days were consumed, 22 of which were occupied in selecting the jury. Thus it appears that in these five trials and one re-trial about 90 days were actually occupied; about 4,524 jurors were summoned, of whom about 2,610 were examined in order to secure 6 panels, or 72 in number, of trial jurors. Before these jurors, thus selected, four convictions were secured, — three of the bribe-taking aldermen, and the arch-briber, — while one mis-trial of an alderman occurred."

[1] The American System of Trial by Jury: an address delivered by D. H. Chamberlain, before the American Social Science Association, 1887.

ANOTHER point deserves notice. Cases involving large mercantile or shipping transactions often arise. "Such cases cannot be submitted to ordinary juries with the prospect of correct or even intelligent verdicts. To continue to require that such cases, involving questions not only of intricacy and complication, but of a nature which lies outside the experience and observation of most men, and dependent for correct solution and decision, not on principles of common-sense or common experience, but on the result of minute, varied, complicated, and involved sets or series of transactions, to be viewed not in general or loosely, but with strict reference to details, and with knowledge and appreciation of most difficult and technical questions and rules of commerce and business, — transactions, too, extending often over many years and through many changes in the *personnel* of the actors, — to require such cases, I say, to be submitted to ordinary juries is plainly, in my judgment, to submit to chance and accident what should pass under the scrutiny of minds fitted by some previous training or experience to treat them with intelligence. The legislation, statutory or constitutional, which shall aim to effect the change here contemplated, should, however, be most carefully guarded in its description of the excepted cases, in order not, under the guise of this reform, to narrow in other respects, to the smallest extent, the province of jury trials in the full scope which they have hitherto been given in our jurisprudence."

AMONG other comments called forth by the recent trial of the Anarchists was one to the effect that an acceptance of the pardon by the convicted person was necessary to its validity. This seems to be the law. In the case of *U. S.* v. *Wilson*,[1] in the words of Chief-Justice Marshall, "A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered, and if it be rejected, we have discovered no power in a court to force it upon him. It may be supposed that no being condemned to death would reject a pardon; but the rule must be the same in capital cases and in misdemeanors. A pardon may be conditional, and the condition may be more objectionable than the punishment inflicted by the judgment." This statement of the law applies to the case of pardons by the executive. If the pardon is by act of the Legislature, "the Court shall give him the benefit of the act, though he waives or refuses it."[2] This is on the ground that "it is considered as a public law, having the same effect on the case as if the general law punishing the offence had been repealed or annulled."[3]

If the convicted person refused the pardon and insisted on the fulfilment of the sentence the situation would be embarrassing. It is hard to conceive of any remedy he would have against the government. The only practical question that could arise would be his capacity as a witness,[4] as the pardon would not be valid. A field of theory is open. For example, would an acceptance of the pardon as the relinquishment of a legal right form a good consideration in a contract?

THE report comes from Iowa of a non-partisan movement in that State to secure the establishment by the new Legislature of what are called "Courts of Conciliation." A description of these courts is given in "The Nation," of November 24.[5]

[1] 7 Pet. 150. [2] Comyn's Dig., Pardon, H. [3] 7 Pet., at p. 163. [4] 1 Bish. Cr. Law, sec. 763.
[5] The Nation, Vol. XLV., p. 406.

This system has been long and thoroughly tried in Denmark, and with great success. Each local community chooses its own tribunal, generally consisting of three members, selected with reference to their personal qualifications and high standing in public confidence. This tribunal has original jurisdiction of every complaint which might be the basis of a *civil* action. No civil action, therefore, can be heard in any regular Court until it has been first heard in the "Court of Conciliation," and failed to end in an agreement there.

The principals appear in person and tell their own stories, and necessary witnesses are heard; "no counsel are allowed." If the decision of the Court is accepted by both parties the judgment has the same legal effect as that of any ordinary Court; the dispute ends, and "lawyers' fees are saved."

During the first five years of the system, out of 116,483 cases brought before the "Courts of Conciliation," 74,742 were there settled; during the next five years 190,836 were heard and 121,970 settled, "and only one-half of the remainder were ever carried to actual litigation."

In the recent case of *Stone* v. *Graves*, administrator, the Supreme Court of Massachusetts rules that a man must pay, under certain circumstances, for being shaved on Sunday. The plaintiff shaved a man sixty-nine times, fifty-two times occurring on Sunday. The man died, and the barber sued the administrator to recover. The defendant asked the Court to rule that, because the shaving was done on Sunday, the plaintiff could not recover. Mr. Justice Field, in a short opinion, remarks, that "if Mr. Graves wished to be shaved on the Lord's day in his own house we cannot say, as matter of law, that it was not morally fit and proper that the plaintiff should shave him."

THE LAW SCHOOL.

IN THE MOOT COURT.

Coram KEENER, J.

Grant v. *Attrill.*

The defendant, holding a majority of the stock in a corporation, caused the directors to levy and threaten assessments for the avowed purpose of building works, but with the real purpose of enabling the defendant to get control of all the stock at a nominal price, the directors not intending to collect the assessment from the defendant. The plaintiff fearing that the assessment would be enforced and the proceeds not applied to the legitimate purposes of the corporation, sold his stock to the defendant, and now files this bill to have the transfer set aside. *Held*, That the secret motive of the directors did not make the assessment invalid; and that the fact that the plaintiff had been induced to make the transfer through mistrust of the management and of the way in which the proceeds of the assessment would be used, was not a sufficient ground for setting the transfer aside.

BILL in equity and demurrer thereto.

The bill is brought to set aside a transfer of stock and to have the defendant declared a trustee thereof for the plaintiff.

The bill alleges that the plaintiff subscribed for and was the owner of 200 shares of the capital stock of the "Crescent City Gas Light Co.,"